



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 7141740

Date: APR. 23, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a senior research associate, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner meets at least three of the ten initial evidentiary criteria for this classification. The matter is now before us on appeal.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

## II. ANALYSIS

The Petitioner is employed as a senior research associate in the Department of Physics & Optical Science at the University of [REDACTED]. He received his master’s degree and Doctor of Philosophy in chemistry from [REDACTED] in Russia. Previously, the Petitioner has worked as an associate professor at [REDACTED], as a senior research associate at [REDACTED], and as a researcher at the [REDACTED] the Russian Academy of Sciences.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to meet five of the ten criteria at 8 C.F.R. 204.5(h)(3)(i)-(x), summarized below:

- (i) Receipt of lesser nationally or internationally recognized awards or prizes;
- (iv) Participation as a judge of the work of others in the field;
- (v) Original scientific contributions of major significance;
- (vi) Authorship of scholarly articles; and
- (vii) Leading or critical role for organizations that have a distinguished reputation.

The Director concluded that he met the participation as a judge criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). The record supports this conclusion. The Petitioner has peer reviewed manuscripts for several journals, including *Optical Materials* and *Optics Letters*, and he has co-authored scholarly articles published in *RSC Advances*, *Liquid Crystals*, *Russian Journal of Applied Chemistry*, and many other professional publications.

On appeal, the Petitioner asserts that the Director disregarded evidence establishing that he satisfies up to three additional criteria, discussed below. After reviewing all the evidence in the record, we find that the Petitioner has not established that he meets a third criterion.

*Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner initially asserted that he met this criterion based on his receipt of “prestigious national awards/grants from the [redacted] and the [redacted]” between 2015 and 2017.<sup>1</sup> In determining that the Petitioner did not satisfy the criterion, the Director emphasized that “a research grant is principally designed to fund future research and does not honor or recognize past excellence.”

On appeal, the Petitioner contends that he provided evidence that [redacted] grants “are awarded through a very competitive process to the most competent and productive researchers who are able to conduct research at the world level.” He asserts that he established by a preponderance of the evidence that “[redacted] considers past accomplishments of the scientists who apply for research grants and their proposals face tough competition at the national level.”

However, we note that the Petitioner did not submit primary evidence of his receipt of the two [redacted] grants, which he identified in his supporting letter by providing a “Project Number” and the titles of the research projects. Rather than providing confirmation of his receipt of these grants from the awarding entity, he relied on testimonial evidence from his colleagues. For example, [redacted] head of the nanotechnology and biotechnology department at [redacted] states that the Petitioner won an [redacted] grant for the project [redacted]. [redacted] [redacted] of [redacted] University references the Petitioner’s receipt of an [redacted] grant for Project No. [redacted]. [redacted] [redacted]

Both letters contain links to [redacted]’s website (www.[redacted]), but the Petitioner did not submit copies of the referenced materials.

These third-party letters are insufficient to establish that the Petitioner received the grants in question. The Petitioner did not provide, for example, any communications he received from the [redacted] with respect to his grants, a public list of awarded projects, or other supporting evidence from the awarding entity.

Further, we agree with the Director’s determination that the Petitioner did not establish that an [redacted] grant is an award “for excellence,” based on a past achievement, rather than an award designed to fund proposed research. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.<sup>2</sup>

<sup>1</sup> The Petitioner has not pursued his initial claim that his [redacted] grants are qualifying nationally or internationally recognized awards or prizes, either in response to the Director’s request for evidence (RFE) or on appeal.

<sup>2</sup> See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

The Petitioner submitted an [ ] publication accompanied by only a partial English translation. The document provides general information regarding the foundation's competitive selection process for funding of research projects. For example, this document indicates that a prospective project manager who seeks to participate in an [ ] grant competition "must confirm his/her scientific qualifications," noting that "[t]he foundation establishes a 'qualification barrier' in the form of the minimum required number of publications that are indexed in the Web of Science and Scopus databases." However, it does not state what that minimum number of publications is or reflect that the grant is awarded based on a researcher's publication record or other pre-existing qualifications.

While the [ ] publication describes a rigorous review process for grant applications, the limited information submitted does not establish that [ ] awards scientists based on their previous outstanding achievements or demonstrated excellence in the field. The record also reflects that in 2016, the [ ] received 3629 compliant applications and ultimately supported a considerable number of projects (581). Finally, the record does not include evidence demonstrating the national or international significance of the prizes in the field. While [ ] is a national organization that accepts applications from throughout Russia, the record does not demonstrate that the hundreds of scientists whose grants are funded annually received recognition that extends beyond the awarding entity. The Petitioner did not provide evidence, for example, the [ ] publishes a public list of grant winners or that the awardees receive any type of media attention.

For these reasons, the Petitioner did not establish that he has received nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

*Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The Petitioner states that he has made "several original, scholarly contributions that are of major significance to the field of development of new methods and technology for production of [ ] [ ]" He emphasized that his original methods and technology have been patented in Russia, that his contributions have been acknowledged by highly accomplished scientists, and that his publications had been cited by others "at least 128" times as of the date of filing.

The Petitioner provided the "Abstract of Invention" for four Russian patents on which he is named as co-inventor. These include: [ ] (2013); [ ] (2016); [ ] (2016); a [ ] (2016); a [ ] (2017)." A patent may recognize the originality of an invention or idea but

does not necessarily establish it as a contribution of major significance in the field; the significance of the patent must be established through other evidence.

The Petitioner provided a letter from [REDACTED] who states that she has 25 years of experience in the Petitioner's field. She describes the Petitioner's patented method of producing [REDACTED] and notes that [REDACTED] with different isotopic compositions is the main material used for production of the elements of [REDACTED]. She further indicates that scientists worldwide have been investigating "the feasibility of using [REDACTED] . . . and instruments for [REDACTED]" and states that the Petitioner's method for producing [REDACTED] "will bring tremendous benefits" to these areas of research. While she describes why the Petitioner's patented method as relevant to their shared field, she does not explain in any detail how it has already impacted or brought "tremendous benefits" to the field to support a finding that it has received recognition as a contribution of "major significance."

Similarly, [REDACTED] comments on the Petitioner's patented "[REDACTED]" noting that the invention is "highly significant all over the world because [REDACTED] isotopes are valuable tools for studies of mineral metabolism in humans." She notes that the work has "wide application potential in medicine for diagnostic and treatment of cancer and cardiovascular diseases." [REDACTED] also briefly addresses this patented method in his letter, noting that "[t]he technical effect of this invention is obtaining a homogeneous [REDACTED] for the purposes of cancer labeling and cancer treatment." However, neither letter describes or provides examples of current applications of the Petitioner's method as a diagnostic or treatment tool, or any other applications, to demonstrate that the method the Petitioner co-invented has already remarkably impacted or influenced the field. The potential for major significance does not satisfy the regulatory requirements.

[REDACTED]'s letter also addresses the Petitioner's two patents related to [REDACTED] emphasizing that the [REDACTED] materials" that can be obtained via the Petitioner's method are "by far the best in the world in terms of their purity." He explains that [REDACTED] "can be implemented in manufacturing of [REDACTED] is used in [REDACTED] devices," and "are very promising for production of [REDACTED]s." Some of these same statements regarding the potential application of these methods are repeated verbatim in a letter from [REDACTED] a professor at the University of [REDACTED] while [REDACTED] echoes [REDACTED]'s statement that the Petitioner's method has produced [REDACTED] materials that are "so far the best in the world." Again, these statements describe the quality of the Petitioner's novel method and its potential for commercial application in the field, without explaining how his method has already been widely implemented or deemed by the field to be remarkably impactful or influential.

[REDACTED] discusses the novelty and potential significance of the Petitioner's research conducted at [REDACTED] including one of his patents and other projects for which he received funding from the [REDACTED] and [REDACTED]. He concludes his letter with a list of the possible applications of the Petitioner's novel contributions in the areas of [REDACTED]. Specifically, he states that the results of the Petitioner's work "are highly beneficial to the scientific communities worldwide as well as to various industries," with potential applications to monitoring

atmospheric pollution and greenhouse gases, disease detection and monitoring, and various applications within the [redacted] industry.

The Petitioner also submitted letters that highlight his current research at [redacted] [redacted], an assistant professor of [redacted], states that he has been working with the Petitioner on a project titled [redacted]” which is financed by [redacted] based on a [redacted] contract. He explains that the fibers developed will have [redacted] applications for the advancement of [redacted] systems and remote [redacted] applications, such as [redacted] [redacted] also emphasizes that the Petitioner’s work on this project has also resulted in “unique technologies and methods,” and highlights two of the Petitioner’s recent co-authored journal articles. However, he does not explain the impact of these technologies and methods on the field. He explains why the Petitioner’s expertise is important to the project, and why the project is important to [redacted] and its fulfillment of the [redacted] contract. However, the record does not establish how the Petitioner’s work on this project, which has not been completed, has resulted in original contributions of major significance. Rather, [redacted] speaks of its potential [redacted] applications.

The letters considered above primarily contain attestations of the novelty of the Petitioner’s research without providing specific examples of contributions that have already made an impact in the field consistent with major significance. Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value.<sup>3</sup> Letters that lack specifics are not considered to be probative evidence that may form the basis for meeting this criterion.<sup>4</sup> USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). The authors’ assertions in the above-referenced letters may describe the Petitioner’s specific projects in detail, but they do not explain who is using the Petitioner’s research findings or otherwise describe how those findings have been implemented throughout the field. For example, the record does not contain documentary evidence indicating whether his research findings have been frequently cited and relied upon by other researchers. Without additional detail explaining the influence of the new or innovative techniques he developed, the record does not adequately demonstrate that the Petitioner’s work in the field has had a demonstrable impact in his field commensurate with a contribution of major significance.

The Petitioner has also submitted “copies and contracts and related documents showing [his] work on development of new engineering methods, processes and prototypes for production of certain novel materials” by the named companies. He emphasized that the evidence demonstrates that at least two Russian manufacturing companies relied on his patented work and engineering methods in their own production processes.

Two of the contracts are between a Russian company (identified as the “customer”) and the [redacted] [redacted], which is named as the “contractor.” While it appears that the agreements may relate to the patented methods the Petitioner co-invented during his tenure as a researcher at [redacted], and he emphasizes that the Russian company now produces certain isotopes of [redacted] based on that research, it remains unclear how one

<sup>3</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

<sup>4</sup> *Id.* at 9.

company's production of these isotopes has had an impact of major significance in his field. He is not named in the submitted materials, and he has not provided a letter from either the Russian company or the [ ] explaining his role in the commercialization of these products or the impact of that work. The Petitioner also submitted a copy of his contract with [ ] in which he, as an individual independent contractor, was expected to define how to receive [ ] [ ] method. He provided a letter from [ ] thanking him for completing the contract and a screenshot from [ ] website indicating that one of the products they offer is [ ] [ ]" However, without additional context, we cannot determine the relevance of his contribution or the impact he made in the field. The fact that some of his research ultimately led to tangible products is not sufficient to establish that he meets the plain language of this criterion.

With respect to the Petitioner's publication record, he indicated at the time of filing that he had published 62 articles which had been cited "at least 128 times." The Petitioner provided the first page of a sampling of his co-authored publications, but he did not provide his full publication and citation history or explain how his record of publications establish that he has made an original contribution of major significance. The evidence submitted does not sufficiently demonstrate that his published work has been cited as authoritative in the field or has otherwise influenced the field in a significant way.<sup>5</sup> Generally, citations can serve as an indication that the field has taken interest in a petitioner's work; however, the fact that the Petitioner has published articles that other researchers have referenced, is not, by itself, sufficient to establish that he meets this criterion.

The Petitioner also provided partial copies of several journal articles that cite his work, and he remarks that the authors of one paper refer to use of a [ ] method as "exciting." However, the significance of the cited papers cannot be determined based on a brief descriptor, and the Petitioner's research in this area, and its impact on the field, is not discussed in the submitted expert opinion letters. Further, the Petitioner has not submitted evidence to show that any of his published research has provoked widespread commentary or received notice from others in the field at a level consistent with "contributions of major significance in the field."

Similarly, evidence relating to the Petitioner's research activities does not demonstrate that he meets this criterion. The record shows that he has been involved in studies that were funded by the [ ] and [ ]. Receiving funding to conduct research, without more, is not an indicator that he has been recognized for making contribution of major significance in the field. Rather, the Petitioner must establish that receiving grants or other similar funding are reflective of his past works' major significance, or that his research conducted with the funding resulted in contributions of major significance in the field. He has not made such a showing.

For the reasons discussed, the Petitioner has not demonstrated that he has made original scientific contribution of major significance in his field.

*Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

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<sup>5</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra* at 8.

The Petitioner initially claimed that he has performed in a leading or critical role for [redacted], [redacted] and [redacted] and the Director acknowledged this claim in his decision. On appeal, the Petitioner primarily addresses his current role with [redacted].

The scope of this evidentiary criterion focuses on the relative importance of his role for distinguished organizations. In general, a critical role is one in which the petitioner contributed in a way that is of significant importance to the outcome of the organization or establishment's activities.<sup>6</sup> In support of this criterion, the Petitioner provided the above-mentioned letters from [redacted], who states that the Petitioner is "the leading researcher" on [redacted]'s project [redacted] and "plays a crucial role on it." He explains that the Petitioner is responsible for developing novel technologies for which "there are no analogs . . . in the United States," and states that the Petitioner's expertise in the field of [redacted] materials" is indispensable to the creation of these technologies.

In a second letter, submitted in response to the Director's RFE, [redacted] states that he is the principal investigator on the above-referenced project, while the Petitioner plays a "central role," in which his expertise is "essential for the success of the collaborative project." He indicates that "the results of [redacted]'s collaboration with [redacted] and the [redacted]'s scientific expert [the Petitioner] in the above-mentioned project would allow [redacted] to complete the contract with the [redacted] successfully and place the company in a unique position to develop and commercialize the innovative [redacted]."

[redacted]'s letters speak to the critical role the Petitioner performs with respect to a single [redacted] research project, but do not provide information indicating how his work on this project is of significant importance to the outcome of the university's activities to a degree consistent with the meaning of "critical role for organizations or establishments." We agree with the Director's determination that the evidence does not establish how the Petitioner's performance in his role on [redacted]'s collaboration project with [redacted] extends beyond a single project and impacts [redacted]'s overall outcomes or activities. The Petitioner does not address this specific determination on appeal, and instead states that the Petitioner's role is "leading or critical for U.S. organizations that benefit from his original scientific contributions." He appears to suggest that his role is critical to both [redacted] [redacted], but he is not employed by either of these organizations, even if his work with [redacted] is expected to ultimately benefit them.

Although the Petitioner's arguments on appeal primarily address his role with [redacted] the Petitioner generally alludes to other evidence detailing his role with prior employers. The record reflects that [redacted] worked with the Petitioner during his two-year tenure at [redacted] and he describes the Petitioner's activities there in detail, noting that his work on specific projects resulted in patents, receipt of grant funding, publications in peer-reviewed journals, and invitations to represent the university as an invited speaker at international conferences. [redacted] states that these achievements "earned him the reputation of one of the leading scientists at our university," and explains that the methods the Petitioner developed for purification of chalcogenide materials remain critical to his department's current work in this area. While the documents show that the Petitioner likely performed a critical role for certain studies at [redacted] he did not demonstrate how his work was leading or critical to the university as a whole.

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<sup>6</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.



We acknowledge [redacted]'s statement that the Petitioner garnered a reputation as a "leading scientist" at the university. However, the Petitioner did not establish how this reputation equates to a finding that university regarded his associate professor position as a leading role, or one that was deemed critical to the outcome of the university's activities. The Petitioner has not provided, for example, an organizational chart or other evidence documenting how his associate professor position fit within the general hierarchy of the university and how his role and his performance differentiated him from the university's other professors, many of which likely conduct and publish their original research, successfully apply for grant awards, and receive invitations to speak at conferences. While [redacted]'s letter establishes that the Petitioner was very productive during his tenure at [redacted] the Petitioner did not demonstrate that he served in a leading or critical role for the university.

Considering the above discussion, the Petitioner has not demonstrated that he meets this criterion.

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.